

DATED

2025

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Paul David Crocker

&

Executors of David George Hann Crocker

&

Smokey Dorset Dreams Ltd.

&

HSBC UK Bank PLC

&

HSBC Bank PLC

**in favour of**

Dorset Council

**Unilateral Undertaking**

under Section 106 of the Town & Country Planning Act 1990 in  
relation to land at Land west of Church Hill, and Land off Butts Close  
and Schoolhouse Lane, Marnhull

Planning Reference: P/OUT/2023/02644

Appeal Reference: APP/D1265/W/24/3353912

## TABLE OF CONTENTS

	PAGE NO
1 DEFINITIONS AND INTERPRETATION	4
2 CONSTRUCTION OF THIS DEED	18
3 CONDITION PRECEDENT	19
4 STATUTORY PROVISIONS AND COVENANTS	19
5 OWNER COVENANTS	20
6 NOTICES	20
7 THIRD PARTIES	21
8 WAIVER	21
9 INDEXATION	21
10 MORTGAGEES' CONSENT	21
11 SECTION 73 PERMISSIONS	22
12 INTEREST	22
13 TERMINATION	22
14 MISCELLANEOUS	22
15 DELIVERY	23
16 JURISDICTION AND LEGAL EFFECT	23
SCHEDULE 1 – PLANNING OBLIGATIONS	24
SCHEDULE 2 - TRANSFER	33
APPENDIX 1 – PLAN 1	36
APPENDIX 2 – PLAN 2	37

**This Unilateral Undertaking** is made the                      day of                      2025

and given by:

- (1) **Paul David Crocker** of Seniors Farm, New Street, Marnhull, Sturminster Newton DT10 1PZ (**the First Owner**); and
- (2) **Paul David Crocker** of Seniors Farm, New Street, Marnhull, Sturminster Newton DT10 1PZ and **Heather Mary Crocker** of 8 Monteagle Drive, Kingswinford DY6 7RY as Executors in the estate of David George Hann Crocker pursuant to a Grant of Probate dated 7 August 2024 (**the Second Owner**);
- (3) **Smokey Dorset Dreams Ltd.** (company registration number 15806110) whose registered office address is at Seniors Farm, New Street, Marnhull, Sturminster Newton DT10 1PZ (**the Third Owner**);
- (4) **HSBC Bank PLC** (company registration number 00014259) whose registered office address is 8 Canada Square, London E14 5HQ (**the First Mortgagee**); and
- (5) **HSBC UK Bank PLC** (company registration number 09928412) whose registered office address is 1 Centenary Square, Birmingham B1 1HQ (**the Second Mortgagee**).

in favour of

- (6) **Dorset Council** of County Hall, Colliton Park, Dorchester, Dorset DT1 1XJ (**the Council**).

## **BACKGROUND**

- A. The Council is the Local Planning Authority as defined in the Act for the area in which the Application Site is situated and the Local Planning Authority for the purposes of planning obligations imposed pursuant to the provisions of Section 106 of the Act.
- B. The First Owner is the registered proprietor of the part of the Application Site which is registered at the Land Registry with freehold title absolute under Title Numbers DT451398, DT333971 and DT279540.
- C. The First Owner is a registered proprietor of the part of the Application Site which is registered at the Land Registry with freehold title absolute under Title Numbers DT333969 and DT333972 jointly with the late David George Hann Crocker. David George Hann Crocker died on 3 September 2023 and pursuant to a Grant of Probate dated 7 August 2024 the Second Owners were appointed as the Executors in his estate.
- D. The Third Owner purchased the part of the Application Site which is registered at the Land Registry with freehold title absolute under Title Numbers DT333971 (part) and DT451938 (whole) as shown edged red on Plan 2 by way of transfer dated 4 July 2024 which at the date of this Deed has not yet been registered by the Land Registry.
- E. The First Mortgagee is the proprietor of a charge registered against Title Number DT333972 and dated 27 September 2005.
- F. The Second Mortgagee is the proprietor of a charge registered against Title Number DT333972 and dated 27 September 2005.

- G. The Council refused the Application on 16 July 2024.
- H. The First Owner has submitted the Planning Appeal for determination by an Inspector appointed by the Secretary of State.
- I. The Owners enter into this Deed to secure the planning obligations contained in it which shall take effect should the Inspector allow the Appeal.
- J. The Parties are satisfied that the restrictions and provisions contained in this Deed are necessary to make the Development acceptable in planning terms, are directly related to the Development and are fairly and reasonably related in scale and kind to the Development.

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the following expressions shall where the context so requires or admits have the following meanings:

### **Act**

means the Town & Country Planning Act 1990 (as amended) or any re-enactment or modification thereof for the time being in force;

### **Affordable Housing**

means affordable housing within the meaning of the NPPF and the Affordable Housing Units shall be Affordable Housing disposed of in accordance with this Deed;

### **Affordable Housing Scheme**

means a scheme showing the physical location, layout, size, typical occupancy and specification (including that of any common parts serving the Affordable Housing Units) and whether the Affordable Housing Units have a parking space or a garage as well as the type and tenure of the individual Affordable Housing Units and shall also include the following:

- i. a map or maps illustrating the distribution of Affordable Housing Units across the Development (including details of tenure)
- ii. a schedule of accommodation including the floor space of each Affordable Housing Unit (m<sup>2</sup>) and number of bedrooms
- iii. additional information (for example in relation to a scheme of prioritisation for the allocation of the Affordable Housing) as may be reasonably required by the Council
- iv. full details of any eligibility criteria for First Homes including draft transfer terms
- v. details of the advertising and marketing strategy for the First Homes

### **Affordable Housing Units**

means the Dwellings to be provided as Affordable Housing in accordance with this Deed;

### **Affordable Rent**

means a weekly rent (inclusive of any service charges an Approved Provider seeks to charge in respect of an Affordable Rented Unit) which does not exceed 80% of Market Rent for a similar dwelling in the locality and with the level of rent to be approved by the Council;

**Affordable Rent Tenancy**

means a tenancy for Affordable Housing for rent only and subject to such terms as permitted by Homes England;

**Affordable Rented Unit**

means any of the Affordable Housing Units to be let by an Approved Provider at an Affordable Rent on an Affordable Rent Tenancy (and the "Affordable Rented Units means all of them);

**Allotments Contribution**

means a financial contribution in the sum of £308.16 (three hundred and eight pounds and sixteen pence) Index Linked per Dwelling payable by the Owners to the Council and to be used by the Council towards the provision of new allotments and/or the enhancement of existing allotments (including subsequent maintenance and management) within the Parish;

**Application**

means the hybrid application made by the Owners to the Council for the Development refused by Council under reference number P/OUT/2023/02644;

**Application Site**

means the Land west of Church Hill, and Land off Butts Close and Schoolhouse Lane, Marnhull, Sturminster Newton, Dorset shown edged red on Plan 1 which is registered with the Land Registry under Title Numbers DT451398, DT333791, DT333969, DT333972 and DT279540;

**Approved Provider**

means:

- (a) a Registered Provider approved by the Council; or
- (b) a provider of housing approved by the Council for the purpose of owning, maintaining and managing Affordable Housing;

**Armed Services Member**

means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service

**Building Control Final Certificate**

means a certificate issued by the building control body or such approved inspector to provide formal evidence that the build works have been carried out in accordance with the Building Regulations 2010

**Bus Services and Sustainable Transport Contribution**

means together:

- a financial contribution of £52,952.88 (fifty two thousand nine hundred and fifty two pounds and eighty eight pence) Index Linked towards the support and increase of the frequency of the bus service that passes through the Parish; and

- a financial contribution of £4,800 (four thousand eight hundred pounds) Index Linked towards six new pole and flag bus stops at the following locations:
  - (a) Mounters, Fingers Corner SW-bound
  - (b) Mounters Finger Corner NE-bound
  - (c) St Gregory's School W-bound
  - (d) St Gregory's School E-bound
  - (e) Pillwell W-bound
  - (f) Pillwell E- bound

#### **Butts Close Area**

means the part of the Application Site registered under title numbers DT451398 and DT333971 and which is subject to the outline component of the Application to erect up to 120 dwellings (to determine access)

#### **Commencement of Development**

means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose):

- (a) operations consisting of land clearance including demolition;
- (b) remediation works relating to any contamination investigation/ clearance/ treatment;
- (c) archaeological investigations;
- (d) investigations for the purpose of assessing ground conditions;
- (e) erection of any temporary means of enclosure;
- (f) the temporary display of notices or advertisements;

and "Commence", "Commencement of Development" and "Commence Development" shall be construed accordingly;

#### **Community Land Trust**

means a not-for-profit organisation operating within the Council's administrative area which leases or owns land for the benefit of the local community;

#### **Community, Leisure and Sports Facilities Contribution**

means a financial contribution in the sum of £2,006.97 (two thousand and six pounds and ninety seven pence) Index Linked per Dwelling payable by the Owners to the Council and to be used by the Council for the enhancement and improvement of community facilities in the Parish, including but not limited to the Parish Hall and car park and the attached Sports Pavilion;

#### **Commuted Sum**

means:

- a financial contribution in the sum of £882.97 (eight hundred and eighty two pounds and ninety seven pence) Index Linked per Dwelling payable by the Owners to the Council or the Parish Council (as appropriate) to be used towards the cost of improvements and maintenance of the LEAP and the LAP if the said LEAP and LAP

are transferred to either the Council or the Parish Council pursuant to Schedule 2 of this Deed; and

- a financial contribution in the sum of £1,594.49 (one thousand five hundred and ninety four pounds and forty nine pence) Index Linked per Dwelling payable by the Owners to the Council or the Parish Council (as appropriate) to be used towards the cost of maintaining the Informal Outdoor Space if the Informal Outdoor Space is transferred to the Council or the Parish Council pursuant to Schedule 2 of this Deed;

### **Council Area**

means the administrative area of the Council;

### **Council's Housing Register**

means the common housing register held by the Council or such other list or register that the Council may in future hold identifying Local Needs Persons or register approved by the Council for the purposes of low cost home ownership;

### **Defects Liability Period**

means a minimum period of 12 months which starts from date the Council receives a copy of the Practical Completion Certificate in respect of the relevant Managed Area. In this 12 month period the Owners are responsible for rectifying any defects reasonably identified by the Council in writing relating to the relevant Managed Area;

### **Development**

means the development as applied for under the Application being for both:

- Full planning permission for a mixed-use development to erect a food store with cafe, plus office space and 2 No. flats above. Erect building for mixed commercial, business and service uses (Class E), (e.g. estate agents, hairdresser, funeral care, dentist, vet). Form vehicular and pedestrian accesses and parking. Form parking area for St. Gregory's Church and St Gregory's Primary School. Carry out landscaping works and associated engineering operations. (Demolish redundant agricultural buildings) at Land west of Church Hill; and
- Outline planning permission (to determine access) to erect up to 120 dwellings at Land off Butts Close and Schoolhouse Lane

that is authorised by the Planning Permission;

### **Disposal**

means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:

- (a) letting or sub-letting in accordance with paragraph 16 to Part 1 of Schedule 1
- (b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner
- (c) a First Homes Exempt Disposal

and "Disposed" and "Disposing" shall be construed accordingly

### **Dwelling**

means a building or part of a building (including the Affordable Housing Units) forming part of the Development and designed for residential occupation and to be provided pursuant to a Reserved Matters Approval;

#### **Education Contribution**

means a financial contribution in the sum of £6,094.34 (six thousand and ninety four pounds and thirty four pence) Index Linked per Qualifying Dwelling to be paid by the Owners to the Council and to be used by the Council towards the provision of secondary school places in the Primary Catchment Area and the Secondary Catchment Area;

#### **Financial Contributions**

means collectively the following financial contributions payable by the Owners to the Council in accordance with this Deed:

- Allotments Contribution;
- Bus Services and Sustainable Transport;
- Community, Leisure and Sports Facilities Contribution;
- Education Contribution;
- Formal Outdoor Sports Contribution;
- Formal Outdoor Sports Maintenance Contribution;
- Libraries Contribution;
- Play Facilities Contribution;
- Play Facilities Maintenance Contribution;
- Pre-School Provision Contribution;
- NHS Infrastructure Contribution;
- Public Footpath Contribution;
- Public Rights of Way Enhancement Contribution;
- SEND Contribution; and
- Trailway Contribution;

and “Financial Contribution” means any one of the above

#### **First Homes**

means a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the First Home Discount Market Price and which on its first Disposal does not exceed the First Homes Price Cap and the term “First Home” shall be construed accordingly

#### **First Homes Discount Market Price**

means the sum which is the Open Market Value discounted by at least 30%

#### **First Homes Eligibility Criteria (National)**

means criteria which are met in respect of a purchase of a First Home if:

- (a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and
- (b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the First Homes Income Cap (National).
- (c) or such other criteria that the Council may agree in writing from time to time

#### **First Homes Eligibility Criteria (Local)**

means criteria which are met in respect of a disposal of a First Home if:

- (a) any or all of criteria (i) (ii) and (iii) below are met:
  - (i) the purchaser has a Local Connection (or in the case of a joint purchase at least one of the joint purchasers has a Local Connection); and/or
  - (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member and/or
  - (iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker

#### **First Homes Exempt Disposal**

means the Disposal of a First Home in one of the following circumstances:

- (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner
- (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner
- (c) a Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order
- (d) a Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 18 to Part 1 of Schedule 1 shall apply to such sale)

Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 16 to Part 1 of Schedule 1

#### **First Homes Income Cap (National)**

means in the case of a First Home, eighty thousand pounds (£80,000) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home

#### **First Homes Owner**

means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:

- (a) the Owner or
- (b) the Developer or
- (c) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for Occupation as a First Home or

- (d) the freehold a tenant or sub-tenant of a permitted letting under paragraph 16 to Part 1 to Schedule 1

**First Homes Practical Completion**

means that the Building Control Final Certificate has been issued and the stage reached when the construction of a First Home is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied

**First Homes Price Cap**

means the amount for which the First Home is sold after the application of the First Home Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State

**First Time Buyer**

means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003

**Formal Outdoor Sports Contribution**

means a financial contribution in the sum of £1,318.80 (one thousand three hundred and eighteen pounds and eighty pence) Index Linked per Dwelling to be paid by the Owners to the Council and to be used by the Council for the Formal Outdoor Sports Facilities;

**Formal Outdoor Sports Facilities**

means the new and improved cricket ground, football pitch, additional tennis court and provision of outdoor exercise equipment within the Parish;

**Formal Outdoor Sports Maintenance Contribution**

means a financial contribution in the sum of £128.73 (one hundred and twenty eight pounds and seventy three pence) Index Linked per Dwelling payable by the Owners to the Council in respect of the future maintenance of the Formal Outdoor Sports Facilities;

**Homes England**

means the national housing land and regeneration agency in England established pursuant to the under the Housing and Regeneration Act 2008 or any legislation amending or replacing the same;

**Housing Need**

means the circumstances where a household is currently occupying accommodation that is substandard or unsuitable for its requirements and which has an income that is too low either to buy or rent accommodation appropriate to their circumstances on the open market (and for the avoidance of doubt this may include circumstances where a household is currently accommodated but requires a form of low cost home ownership such as Shared Ownership);

**Index**

means the All in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation;

**Index-Linked**

means an adjustment in the amount of any of the Contributions in accordance with the provisions set out in clause 10 of this Deed and "Index Linking" shall be similarly construed;

**Informal Outdoor Space**

means the public open space to be provided on the Application Site by the Owners to be agreed in accordance with Part 3 of Schedule 1 to this Deed;

**Informal Outdoor Space Management Plan**

means a scheme to be agreed in writing with the Council (both parties acting reasonably in agreeing the scheme) to secure the future management and maintenance of the Informal Outdoor Space to be submitted as part of the Reserved Matters Application;

**Informal Outdoor Space Specification**

means details and specifications for the laying out and provision of the Informal Outdoor Space together with triggers for delivery and maintenance requirements of the Informal Outdoor Space to be agreed in writing with the Council;

**Inspector**

means the inspector appointed by the Secretary of State to determine the Appeal;

**Interest**

means interest at 4% per annum above the base rate from time to time of Lloyds Bank;

**Key Worker**

means a person employed or with a confirmed job offer in one of the following categories of employment:

- (a) Health and social care
- (b) Education and childcare
- (c) Key public services
- (d) Local and national government
- (e) Food and other necessary goods
- (f) Public safety and national security
- (g) Transport
- (h) Utilities, communication and financial institutions,

or such other categories of employment as may be published by the Council from time to time

**LAP**

means the local area of play to be provided on the Butts Close Area of not less than 100sqm in area specifically designated and primarily laid out for very young children to play close to where they live;

**LEAP**

means Local Equipped Area for Play to be provided on the Butts Close Area of not less than 400sqm in area which is specifically designed and laid out with features including equipment for children who are beginning to play independently;

**Libraries Contribution**

means a financial contribution in the sum of £75 (seventy five pounds) Index Linked per Dwelling payable by the Owners to the Council and to be used by the Council towards additional equipment and stock at Sturminster Newton Library;

**Local Connection**

means a connection (calculated from the Start Date) with the Parish or the Council Area, as follows:

- (a) being permanently resident therein for at least 2 years
- (b) in permanent full-time or part-time (minimum 16 hour contract per week) work therein for 6 months. This may include the need to move to the Council Area in connection with permanent employment (minimum 16 hour contract per week) where commuting from the person's existing home is accepted by the Council as unreasonable. In all cases there should be no break in the period of employment for more than 3 months over the relevant period
- (c) having immediate relatives (i.e. parents, non-dependent children, brother or sister) who have lived therein for at least 5 years and with whom there has been shown to have been frequent contact, commitment or dependency
- (d) other categories or relationships may be considered by the Council including foster relationships where clear evidence of frequent contact, commitment dependency is shown
- (e) other special circumstances which create a link to the Council Area (not including residence in a hospital armed forces accommodation holiday let or prison or rehabilitation facility) and having been first verified in writing by the Council as having such special circumstances and this may include the need to reside in the Council Area to give or receive medical support or (with the approval of the Council) some other form of special support

and in each case with priority given in accordance with any scheme of prioritisation approved as part of the Affordable Housing Scheme pursuant to Part 1 Paragraph 11 of the Schedule 1 hereto;

**Local Needs Person**

means a person or persons in Housing Need (together with immediate family and dependents of such a person) who are registered on the Council's Housing Register and have a Local Connection as confirmed in writing by the Council or in the case of Shared Ownership Units as confirmed in writing by the Approved Provider and with priority given in the order below:

- (a) firstly persons who have a Local Connection to the Primary Catchment Area; then
- (b) if no person(s) satisfying the requirements in (a) above have identified within 2 months from when the Approved Provider first commenced the process to identify a Local Needs Person satisfying the criteria in a) above then persons with a Local Connection to the Council Area;

**Managed Areas**

means:

- i. the Informal Outdoor Space including (for the avoidance of doubt (unless and until the same adopted by a relevant statutory undertaker) any and all surface drainage features, systems apparatus and infrastructure present, provided, laid or constructed thereon relating to the Development; and
- ii. the Play Areas; and
- iii. Private Roads and Paths

and 'Managed Area' shall be construed accordingly

### **Management Company**

means such company or body as may be established or nominated by the Owners and approved in writing by the Council for the purposes of managing and maintaining the Managed Areas;

### **Market Rent**

means the estimated amount for which an Affordable Rented Unit should be let on the date of valuation between a willing lessor and willing lessee (disregarding the obligations in this Deed) in an arm's length transaction after proper marketing where the parties have acted knowledgeably, prudently and without compulsion such estimated amount to be agreed between the Council and the Approved Provider or in the absence of such agreement to be determined by the Valuer in accordance with the principles set out above;

### **NHS Infrastructure Contribution**

means a financial contribution in the sum of £772 (seven hundred and seventy two pounds) Index Linked per Dwelling payable by the Owners to the Council and to be used by the NHS towards the costs of providing additional clinical space in the primary network, and support infrastructure for secondary and community care within the NHS system in the local area, which will serve the residents of the Development; **Notice of Availability**

means a notice in writing informing the Council that the Affordable Housing Unit is available for Occupation;

### **Notice of Commencement**

means a notice in writing to advise the Council of the date that Commencement of Development will take place;

### **NPPF**

means the National Planning Policy Framework published in December 2024 (as may be amended modified or added to from time to time);

### **Occupation**

means for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display and "Occupy" and "Occupied" shall be similarly construed;

### **Offer to Dispose**

means a formal written offer to dispose of a Shared Ownership Lease in terms and at a value (to the determined by the Valuer in the event of a dispute) consistent with the provisions of this Deed;

### **Open Space Specifications**

means together:

- the Informal Outdoor Space Management Plan;
- the Informal Outdoor Space Specification;
- the Play Area Management Plan; and
- the Play Area Specification;

**Open Market Dwellings**

means those Dwellings which are not Affordable Housing Units;

**Open Market Value**

means the amount which 100% of the freehold or long leasehold interest in the relevant Affordable Housing Unit could reasonably be expected to be realised if sold on the open market by a willing vendor to a willing purchaser and disregarding the obligations and restrictions contained in this Deed and shall be calculated as being the average of two Open Market Value valuations assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) by a member of the Royal Institution of Chartered Surveyors

**Parish**

means the parish of Marnhull;

**Parish Council**

means Marnhull Parish Council;

**Plan 1**

means the plan annexed to this Deed at Annex 1;

**Plan 2**

means the plan annexed to this Deed at Annex 2;

**Planning Appeal**

means the planning appeal in respect of the Council's refusal of the Application which has been given reference APP/D1265/W/24/3353912;

**Planning Permission**

means the planning permission for the Development that may be granted by the Secretary of State pursuant to the Planning Appeal;

**Play Area**

means the on site LAP and LEAP to be provided as part of the Development;

**Play Area Management Plan**

means a scheme to be agreed in writing with the Council (both parties acting reasonably in agreeing the scheme) to secure the future management and maintenance of the Play Area to be submitted as part of the Reserved Matters Application;

**Play Area Specification**

means details, specifications and maintenance for the laying out and provision of the Play Area together with triggers for delivery to be agreed with the Council;

#### **Play Facilities**

means the upgrading of existing play equipment and skate park and provision of a multi-use games area within the Parish;

#### **Play Facilities Contribution**

means a financial contribution in the sum of £967.52 (nine hundred and sixty seven pounds and fifty two pence) Index Linked per Dwelling payable by the Owner to the Council and to be used by the Council towards upgrading the Play Facilities;

#### **Play Facilities Maintenance Contribution**

means a financial contribution in the sum of £359.36 (three hundred and fifty nine pounds and thirty six pence) Index Linked per Dwelling payable by the Owner to the Council and to be used by the Council towards the future maintenance of the Play Facilities;

#### **Practical Completion**

means in relation to any works of construction forming part of the Development or any works required pursuant to this Deed, completed in all material respects (but not including fitting out) such that a certificate of practical completion in relation to building works can be issued under industry standard construction contracts for such works and "Practically Completed" shall be construed accordingly;

#### **Pre-School Provision Contribution**

means a financial contribution in the sum of £190.50 (one hundred and ninety pounds and fifty pence) per Qualifying Dwelling payable by the Owners to the Council and to be used by the Council towards the provision and/or enhancement of pre-school provision within the Primary Catchment Area;

#### **Primary Catchment Area**

means the parishes of Marnhull, Hinton St Mary, Fifehead Magdalen, Todber, Stour Provost, Margret Marsh, West Orchard and Manston;

#### **Private Roads and Paths**

means all vehicular roads and pedestrian and cycle paths and ways (including all verges thereto) to be constructed within the Application Site as part of the Development save that any of the said roads, paths and ways which are subsequently adopted as public highway by the local highway authority shall from the date of the said adoption no longer fall within this definition for the purposes of this Deed;

#### **Qualifying Dwelling**

means a Dwelling comprising two or more bedrooms;

#### **Registered Provider**

means a registered provider of social housing as defined in the Housing and Regeneration Act 2008;

**Reserved Matters Application**

means an application for the approval of one or more reserved matters (as defined by Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015) reserved for approval by the Planning Permission;

**Reserved Matters Approval**

means an approval by the Council of a Reserved Matters Application for the Development;

**Public Footpath Contribution**

means a financial contribution in the sum of £44,000 (forty four thousand pounds) Index Linked payable by the Owners to the Council and to be used by the Council towards diverting and surfacing Footpath Numbers N47/31 and N47/33, the dedication and surfacing of an informal footpath off Sackmore Lane and the administrative costs involved;

**Public Rights of Way Enhancement Contribution**

means a sum equal to £35.05 (thirty five pounds and five pence) Index Linked per Dwelling for the upgrading/provision of pedestrian and bridleway gates, appropriate surfacing and signage required in relation to any footpath within the Parish of Marnhull;

**Satisfaction Notice**

means a notice issued by the Council following the Defects Liability Period for the relevant Managed Area confirming that the relevant Managed Area has been constructed in accordance with the relevant approved specifications;

**Secondary Catchment Area**

means the secondary school in Gillingham;

**Secretary of State**

means the Secretary of State for Housing, Communities and Local Government or any successor Secretary of State exercising planning functions under the 1990 Act;

**SEND**

means Special Educational Needs and Disabilities Education;

**SEND Contribution**

means a financial contribution in the sum of £1,487.62 (one thousand four hundred and eighty seven pounds and sixty two pence) Index Linked per Qualifying Dwelling to be used towards SEND facilities in primary, secondary and post-16 education within the Council Area;

**Services**

means the service media (including without limitation highways water pipes foul and surface water drainage (such service media shall be provided to adoptable standard and an appropriate adoption agreement shall have been completed with the relevant adopting body at the date of Transfer) electricity gas supply telecommunications internet high band with broadband communication services));

#### **Shared Ownership Lease**

means a lease for the rent and sale of an Affordable Housing Unit provided on terms which accord with the requirements of Homes England for shared ownership tenure and "Shared Ownership" shall be similarly construed;

#### **Shared Ownership Unit**

means the Affordable Housing Units to be constructed as subsidised housing for shared ownership pursuant to a Shared Ownership Lease (and the "Shared Ownership Units" means all of them);

#### **Staircasing Payment**

means any monies received following the sale of a Shared Ownership Unit as a result of the leaseholder exercising a right to increase their share of the equity in the Shared Ownership Unit (and any part of such monies) and "Staircasing" shall be similarly construed;

#### **Start Date**

means the date immediately preceding the date on which the Affordable Housing Unit is Occupied by a Local Needs Person;

#### **Tess Square Area**

means the part of the Application Site with the whole of title number DT333972 and part of title numbers DT333969 and DT333971 and which is subject to the full component of the Application for a mixed-use development to erect a food store with cafe, plus office space and 2 No. flats above. Erect building for mixed commercial, business and service uses (Class E), (e.g. estate agents, hairdresser, funeral care, dentist, vet). Form vehicular and pedestrian accesses and parking. Form parking area for St. Gregory's Church and St Gregory's Primary School. Carry out landscaping works and associated engineering operations. (Demolish redundant agricultural buildings);

#### **Trailway Contribution**

means a financial contribution in the sum of £10,000 (ten thousand pounds) payable by the Owner to the Council and to be used by the Council for the provision of the North Dorset Trailway between Sturminster Newton and Stalbridge within the Parish;

#### **Valuer**

means an independent expert who is a member or fellow of the Royal Institution of Chartered Surveyors and approved in writing by the Council and in the absence of agreement as nominated by the President (or other appropriate person) of the RICS on the application of either party;

### **Working Day**

means Monday to Friday inclusive excluding Bank or public holidays

## **2. CONSTRUCTION OF THIS DEED**

- 2.1 Words importing the masculine include the feminine and neuter gender and vice versa.
- 2.2 Words importing the singular include the plural and vice versa.
- 2.3 Words importing persons include companies corporations and vice versa and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation (including by becoming a successor in title) all their obligations can be enforced against all of them jointly and against each individually.
- 2.5 Insofar as different parts of or interests in the Application Site are owned by different persons each person covenants with the Council and with one another to co-operate insofar as they are able to ensure that the covenants herein on behalf of the Owners are fulfilled as expeditiously as possible.
- 2.6 The headings throughout this Deed are for convenience only and shall not be taken into account in the construction and interpretation of this Deed.
- 2.7 Any reference to a clause paragraph schedule or plan is to one in to or attached to this Deed and any reference to this Deed includes any schedule, plan, annexure or other attachment to this Deed.
- 2.8 In the absence of contrary provision any reference to a statute or statutory instrument includes any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force and reference to a statute includes any statutory instrument direction or specification made or issued under the statute or deriving validity from it.
- 2.9 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and successors to any statutory functions of the Council.
- 2.10 Covenants to do or not to do an action shall include respectively a covenant to permit or not to permit that action to be done

## **3. CONDITION PRECEDENT**

- 3.1 This Deed takes effect on:
  - (a) the grant of the Planning Permission; and
  - (b) Commencement of Development

SAVE THAT the planning obligations contained in this Deed and Schedules therein shall be conditional so that they shall only come into effect in the event that the Secretary of State (by his Inspector or otherwise) determining the Planning Appeal finds that the relevant obligation satisfies the test of regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

#### **4. STATUTORY PROVISIONS AND COVENANTS**

- 4.1 This Deed is entered into pursuant to the provisions of section 106 of the Act, section 111 of the Local Government Act 1972 and section 1 of Localism Act 2011 and all other enabling powers and shall be deemed to be planning obligations in respect of the Application Site for the purposes of that section but without prejudice to all and any other means of enforcing them at law or in equity or by statute.
- 4.2 The covenants and obligations created by this Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as local planning authority.
- 4.3 This Deed shall cease to have effect in respect of any then outstanding obligations in the event that the Planning Permission is revoked or is modified without the Owners' consent.
- 4.4 No person will be liable for any breach of this Deed unless they hold an interest in that part of the Application Site in respect of which such breach occurs or hold such an interest at the date of the breach provided that the person shall remain liable for any antecedent breach.
- 4.5 This Deed shall not be enforceable against:
  - 4.5.1 owners or owner-occupiers or tenants of any individual Open Market Dwelling nor against those deriving title from any of them;
  - 4.5.2 owners or owner-occupiers or tenants of any Affordable Housing Unit(s) nor against those deriving title from any of them (save in respect of paragraphs 9, 10, 16 and 17 of Part 1 of Schedule 1 which shall be enforceable against owners or owner-occupiers or tenants of any Affordable Housing Unit(s) and against those deriving title from any of them);
  - 4.5.3 any statutory undertaker holding an estate or interest in the Application Site or part of the Application Site nor against plant equipment conduits or structures located there for its operational purposes;
  - 4.5.4 anyone whose only interest in the Application Site or any part of it is in the nature of the benefit of an easement or covenant, or as the owner of the sub-soil of any highway within the Application Site;
  - 4.5.5 any mortgagee or chargee of any part of the Application Site save in the event that said mortgagee or chargee becomes successor in title to the Owners and is in possession of all or any part of the relevant land and has itself occasioned the breach of the terms of the Deed; nor
  - 4.5.6 any Approved Provider acquiring an interest in the Application Site pursuant to Part 1 of Schedule 1 to this Deed save that such Approved Provider shall be bound by the provisions of the said Part 1 of Schedule 1.

## **5. OWNER COVENANTS**

- 5.1 The Owners covenant with the Council as set out in the Schedules to this Deed.
- 5.2 The Owners shall pay to the Council its reasonable and proper legal and administrative costs and disbursements associated with the preparation of this Deed, including the Council's sealing fee of £110, on or before the date hereof.

## **6. NOTICES**

- 6.1 Any notice or consent required or permitted under this Deed shall be in writing and shall be sent by first class registered post. There shall be no right to serve notices or consents by email unless the Council agrees.
- 6.2 Unless otherwise notified by the Council the postal addresses for the service of notices are those set out at the beginning of this Deed.
- 6.3 The Owners shall serve notice on the Council at least 8 Working Days prior to each of the matters stipulated below occurring:
- 6.3.1 the Commencement of Development;
  - 6.3.2 Practical Completion;
  - 6.3.3 Occupation of the first Dwelling.
- 6.4 The Owners shall not Commence Development until they have served the notice under clause 6.3.1.
- 6.5 The Owners shall not permit Occupation of the first Dwelling until they have served the notice under clause 6.3.3.
- 6.6 The Owners shall give immediate written notice of any change in ownership of any of their interests in the Application Site occurring before all the obligations under this Deed have been discharged within 20 Working Days of any such change. Such notice to give details of the transferee's name and registered office (if a company or usual address if not) together with the area of the Application Site or unit of occupation transferred by reference to a plan PROVIDED THAT this clause shall not apply to the creation of a Legal Charge, the sale of individual Dwelling(s) or the grant of any tenancies or Shared Ownership Leases of the Affordable Housing Units by the Approved Provider.

## **7. THIRD PARTIES**

- 7.1 This Deed is not intended nor shall it purport to confer on any third party any right, entitlement, claim or benefit to enforce any term of this Undertaking for the purposes of the Contracts (Rights of Third Parties) Act 1999.

## 8. **WAIVER**

- 8.1 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## 9. **INDEXATION**

- 9.1 All sums of money payable to the Council under this Deed shall be increased (as at the date or dates on which each payment is made) in accordance with the following formula:

$$C = \text{£Y} \times \frac{B}{A}$$

where:

**A** is the value of the Index specified in the provision concerned or, if none is specified, the firm or final Index figure, last published before the date of this Deed;

**B** is the value of such Index (firm or final figure) last published before the date on which the payment in question is due pursuant to this Deed;

**C** is the sum in question after application of this formula; and

**£Y** is the sum to which this formula is applied;

provided that if the Index shall cease to exist, there shall be substituted such other index of building costs as shall be specified by the Council and provided further that if the application of this calculation produces a reduction in the sum in question, such sum shall remain unchanged.

## 10. **MORTGAGEES' CONSENT**

- 10.1 The First Mortgagee and the Second Mortgagee hereby consent to the Second Owner entering into the obligations contained in this Deed to such obligation binding the Application Site but for the avoidance of doubt the First Mortgagee and the Second Mortgagee shall not be liable for any breach of the obligations contained in this Deed unless either or both of them takes possession of the Application Site in which case it too will be bound by the obligations as if it were a person deriving title from the Second Owner but shall not be liable for any breach which occurred prior to the Mortgagee taking possession of the Application Site

## 11. **SECTION 73 PERMISSIONS**

- 11.1 If the Council agrees pursuant to an application under section 73 of the Act to any variation or release of any condition contained in the Planning Permission or if any condition is varied or released following an appeal under section 78 of the Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission save where the Council in their determination of such an application for the new planning permission or the Secretary of State or Inspector in their determination of

such appeal indicate that consequential amendments are required to this Deed to reflect the impact of the section 73 application and in such circumstances a separate deed pursuant to section 106 of the Act will be required to secure relevant planning obligations relating to the new planning permission.

**12. INTEREST**

- 12.1 If any payment due under Deed is paid late, interest will be payable from the date payment is due to the date of payment.

**13. TERMINATION**

- 13.1 If before Commencement of Development the Planning Permission
- (a) expires within the meaning of Section 91 92 and 93 of the Act; or
  - (b) is revoked, quashed or modified without the consent of the Owners;
- this Deed shall cease to have effect.

**14. MISCELLANEOUS**

- 14.1 This Unilateral Undertaking constitutes a Deed.
- 14.2 The Owners hereby consent to the registration of this Deed as a Local Land Charge.
- 14.3 If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired.
- 14.4 Nothing in this Deed shall prohibit or limit the right to develop any part of the Application Site in accordance with any other planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 14.5 Nothing contained or implied in this Deed shall prejudice affect fetter or restrict the rights powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority or any other statutory function rights duties powers and obligations under all public and private statutes byelaws and regulations.
- 14.6 If any part of the planning obligations contained in this Deed are found by the Secretary of State pursuant to the Planning Appeal to be inconsistent with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) then this shall not affect the legality of the remainder of the obligations required pursuant to this Deed.

**15. DELIVERY**

- 15.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

15.2 In witness whereof this Deed has been duly executed by the Owner the day and year first before written.

16. **JURISDICTION AND LEGAL EFFECT**

16.1 This Deed is subject to and will be construed in all respects in accordance with English law.

## **SCHEDULE 1**

### **Planning Obligations**

The Owners undertake to the Council as follows:

#### **PART 1**

##### **Affordable Housing**

1. Not to submit a Reserved Matters Application without simultaneously submitting the proposed Affordable Housing Scheme to the Council and not to Commence Development until the Affordable Housing Scheme has been submitted to and approved in writing by the Council.
2. Not to Commence Development until a Notice of Commencement has been served on the Council.
3. To provide no less than 40% of the total number of Dwellings as Affordable Housing Units.
4. The Affordable Housing Units shall not be Occupied other than as Affordable Housing subject to the provisions of this Deed save:
  - 4.1. with respect to any tenant or occupier or lessee of an Affordable Housing Unit where such tenant or occupier or lessee has:
    - 4.1.1. exercised a statutory right to acquire with respect to the relevant Affordable Housing Unit or
    - 4.1.2. with respect to a Shared Ownership Unit where the lessee has acquired the freehold of that Shared Ownership Unit by virtue of Staircasing where the Shared Ownership Lease so permits (and the mortgagees and successors in title of such persons and the mortgagees of such successors in title);
  - 4.2. and save also where expressly specified otherwise elsewhere herein.
5. To comply with the Affordable Housing Scheme approved pursuant to Paragraph 1 above.
6. To provide not less than:
  - 6.1. 52% of the Affordable Housing Units as Affordable Rented Units
  - 6.2. 23% of the Affordable Housing Units as Shared Ownership Units; and
  - 6.3. 25% of the Affordable Housing Units as First Homes (or such other form of Affordable Housing as approved pursuant to the Affordable Housing Scheme).
7. Not to Occupy or permit Occupation of more than 50% of the Open Market Dwellings until such time as:
  - 7.1. 50% of the Affordable Housing Units have been constructed and substantially completed and transferred to an Approved Provider. Not to Occupy or permit Occupation of more than 90% of Open Market Dwellings until such time as 100% of the Affordable Housing Units have been constructed and substantially completed and transferred to an Approved Provider.

8. Save as provided in Paragraphs 10 and 16 below in this Part 1 of Schedule 1, not to Occupy or permit Occupation of any of the Affordable Housing Units other than by Local Needs Persons and in the manner specified in the approved Affordable Housing Scheme.
9. Not to Occupy or permit Occupation of the Affordable Rented Units at any time otherwise than by Local Needs Persons and by way of an Affordable Rent Tenancy at an Affordable Rent.
10. Not to Occupy or permit Occupation of the Shared Ownership Units at any time otherwise than by Local Needs Persons and by way of a Shared Ownership Lease unless the Shared Ownership Unit is for sale and the criteria set out in either Paragraph 10.1 or 10.2 below have been fulfilled:-

10.1. All four of the following steps (a) to (d) have been taken:-

(a) the Owner has served a Notice of Availability on the Council that the relevant Shared Ownership Unit is available for Occupation; and

(b) a period of not less than 14 weeks has elapsed since the service of that Notice of Availability and during that period a disposition of the Shared Ownership Lease to a Local Needs Person or an Approved Provider has not been concluded despite all reasonable endeavours by the Owner (and for the avoidance of doubt the Owner shall not have used all reasonable endeavours if unable to offer vacant possession to the buyer); and

(c) (if the Shared Ownership Unit has not by then been sold) the Owner has made an Offer to Dispose of the Shared Ownership Lease to the Council or its nominee (such offer to remain open for a period of not less than 14 weeks and not to be served until the 14 week (minimum) period referred to in Paragraph 10.1(b) above has elapsed); and

(d) during the period of the Offer to Dispose a disposition of the Shared Ownership Lease to the Council or its nominee has not been concluded despite all reasonable endeavours by the Owner (and for the avoidance of doubt the Owner shall not have used all reasonable endeavours if unable to offer vacant possession to the buyer)

OR

- 10.2. The owner of a Shared Ownership Unit has acquired the freehold of that Shared Ownership Unit by virtue of Staircasing (where the Shared Ownership Lease so permits)

AND in the event that the criteria set out in either paragraph 10.1 or 10.2 above have been fulfilled THEN the Owner shall be entitled to dispose of the Shared Ownership Unit free from the Affordable Housing restrictions of this Deed and all future dispositions of the Shared Ownership Unit shall likewise be free from the Affordable Housing restrictions set out herein.

11. Where the Affordable Housing is to be provided with the involvement of a Community Land Trust or Housing Association the Owner shall consult with the Community Land Trust or Housing Association when preparing the Affordable Housing Scheme and endeavour where reasonable to incorporate any additional requirements of the Community Land Trust or Housing Association including any reasonable preferences of the Community Land Trust or Housing Association to impose a scheme of prioritisation for the allocation of the Affordable Housing to Local Needs Persons.
12. The Approved Provider shall use its reasonable endeavours to apply any Staircasing Payment (excluding build costs and fees) to the provision of Affordable Housing within the Council area

unless otherwise agreed in writing by the Council and the Approved Provider shall produce to the Council evidence to demonstrate this upon request.

### **First Homes**

13. First Homes shall be marketed for sale in accordance with the Affordable Housing Scheme and shall only be sold (whether on a first or any subsequent sale) in as First Homes to:
  - 13.1. a person or person(s) meeting the First Homes Eligibility Criteria (National)
  - 13.2. a person or person(s) meeting the First Homes Eligibility Criteria (Local) and
  - 13.3. at a price no greater than a sum equal to 70% of the Open Market Value of the relevant First Homes.
14. No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until the Council has issued the Compliance Certificate
15. Subject to paragraph 18 of this Part no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a mortgagee subject to Government guidance from time to time in force
16. Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 16.1 – 16.4 below.
  - 16.1. A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years
  - 16.2. A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council in writing and the Council consents in writing to the proposed letting or sub-letting provided that it is any of circumstances (a) - (f) below:
    - a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment
    - b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the duration of the letting or sub-letting
    - c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm
    - d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown
    - e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy
    - f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person

- 16.3. A letting or sub-letting permitted pursuant to paragraph 16.1 or 16.2 of this Part must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting
- 16.4. Nothing in this paragraph 16 prevents a First Homes Owner from renting a room within their First Homes or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Homes Owner's main residence
17. On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:
- "No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Dorset Council of County Hall, Colliton Park, Dorchester, Dorset, DT1 1XJ or their conveyancer that the provisions of clause XX (the First Homes provisions) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"*
18. The owner of a First Home (which for the purposes of this paragraph shall include the Owner and any First Homes Owner) may apply in writing to the Council to Dispose of it other than as a First Home on the grounds that either:
- 18.1. the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Affordable Housing Scheme (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to First Homes Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 10 and 12 of this Part
- 18.2. requiring the First Homes Owner to undertake active marketing in accordance with the Affordable Housing Scheme for the period specified in paragraph 18.1 of this Part before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship
19. Where a written request made in accordance with paragraph 18 of this Part and the Council has confirmed in writing within 28 days that either of the grounds at paragraph 18 of this Part are satisfied the relevant Dwelling may be disposed of:
- 19.1. to a Registered Provider and/or the Council at the First Homes Discount Market Price; or
- 19.2. (if the Registered Provider and/or the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home
- and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling
20. If the Registered Provider and/or the Council does not wish to acquire the relevant First Home and the Council is not satisfied that either of the grounds in paragraph 18 of this Part above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 18 of this Part serve notice on the owner setting out the further steps it

requires the owner to take to secure the Disposal of a First Home as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the First Home as a First Home he may serve written notice on the Council in accordance with paragraph 18 of this Part following which the Development Enabling Specialist must within 28 days issue confirmation in writing that the First Home may be disposed of other than as a First Home

### **Mortgagee Exclusion**

21. The restrictions in this Part 1 of Schedule 1 shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver)) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver")) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
- 21.1. such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Unit(s) and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- 21.2. if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the provisions that apply to the Affordable Housing Units in this Deed which provisions shall determine absolutely.

## **PART 2**

### **Financial Contributions**

#### **1. Education Contribution, Pre-School Provision Contribution and the SEND Contribution**

- 1.1 To pay 50% of each of the Education Contribution, the Pre-School Provision Contribution and the SEND Contribution prior to the first Occupation of the Development.
- 1.2 Not to Occupy the Development until 50% of each of the Education Contribution, the Pre-School Provision Contribution and the SEND Contribution has been paid to the Council.
- 1.3 To pay the remaining 50% of each of the Education Contribution, the Pre-School Provision Contribution and the SEND Contribution to the Council prior to the Occupation of 50% of the Dwellings.
- 1.4 Not to Occupy more than 50% of the Dwellings until the Education Contribution, the Pre-School Provision Contribution and the SEND Contribution have been paid to the Council in full;

## **2. Library Contribution, Allotments Contribution and NHS Infrastructure Contribution**

- 2.1 To pay 50% of each of the Library Contribution, the Allotments Contribution and the NHS Infrastructure Contribution to the Council prior to Occupation of the first Dwelling;
- 2.2 To pay the remaining 50% of each of the Library Contribution, the Allotments Contribution and the NHS Infrastructure Contribution prior to Occupation of 50% of the Dwellings;
- 2.3 Not to Occupy or allow or permit Occupation of the first Dwelling until 50% of each of the Library Contribution, the Allotments Contribution and the NHS Infrastructure Contribution has been paid;
- 2.4 Not to Occupy or allow or permit Occupation of more than 50% of the Dwellings until each of the Library Contribution, the Allotments Contribution and the NHS Infrastructure Contribution has been paid to the Council in full

## **3. Bus Services and Sustainable Transport Contribution**

- 3.1 To pay 50% of the Bus Services and Sustainable Transport Contribution to the Council prior to Occupation of the first Dwelling;
- 3.2 To pay the remaining 50% of the Bus Services and Sustainable Transport Contribution prior to Occupation of 50% of the Dwellings;
- 3.3 Not to Occupy or allow or permit Occupation of the first Dwelling until 50% of the Bus Services and Sustainable Transport Contribution has been paid;
- 3.4 Not to Occupy or allow or permit Occupation of more than 50% of the Dwellings until the Bus Services and Sustainable Transport Contribution has been paid to the Council in full.

## **4. Public Footpath Contribution**

- 4.1 To pay 100 % of the Public Footpath Contribution prior to the Occupation of the Tess Square Area;
- 4.2 Not to Occupy or allow or permit Occupation of any part of the Tess Square Area until the Public Footpath Contribution has been paid in full to the Council.

## **5. Other Financial Contributions**

- 5.1 To pay 50% of the following remaining contributions to the Council prior to the Occupation of 25% of the Dwellings:
  - (a) Community, Leisure and Sports Facilities Contribution;
  - (b) Formal Outdoor Sports Contribution;
  - (c) Formal Outdoor Sports Maintenance Contribution;
  - (d) Play Facilities Contribution;
  - (e) Play Facilities Maintenance Contribution;
  - (f) Public Rights of Way Enhancement Contribution; and

(g) Trailway Contribution

(h) Libraries Contribution

("the **Remaining Contributions**")

5.2 Not to Occupy or allow or permit Occupation of more than 25% of the Dwellings until 50% of the remaining the Remaining Contributions have been paid to the Council;

5.3 To pay the remaining 50% of the Remaining Contributions to the Council prior to the Occupation of more than 50% of the Dwellings.

5.4 Not to Occupy allow or permit Occupation of more than 50% of the Dwellings until the remaining 50% of the Remaining Contributions has been paid to the Council in full.

### **PART 3**

#### **Provision of Informal Outdoor Space**

1. The open space and play facilities to be provided on the Application Site shall comprise the following:

a. The Play Area; and

b. Informal Outdoor Space.

collectively "**the Open Space**"

2. Not to Commence Development until the Owners have submitted to and obtained the Council's written approval of the Open Space Specifications.

3. The Play Area is to be designed and constructed in accordance with the Fields in Trust: Planning and Design for Outdoor Sport and Play 2008 and shall be designed to be in accordance with the Equality Act 2010. The design should take account of Government guidance on Developing an Accessible Play Space and ROSPA's guidance on accessible play areas;

4. The equipment will be designed, manufactured, install and maintained in accordance with BS EN1176:2008 and BS EN 1177:2008 and provided with clear signage as to who is responsible for the provision, maintenance and inspection of the equipment providing clear contact details upon such signage

5. To construct and deliver at the Owner's expense the Open Space in accordance with the Open Space Specifications as approved by the Council in accordance with paragraph 2 in this Part of this Schedule and not to Occupy or permit or allow the Occupation of more than 50% of the Dwellings until the Open Space has been Practically Completed and a copy of the Practical Completion Certificate has been provided to the Council, following which the Owners will allow access to the Council to inspect the Informal Outdoor Space.

6. The Owners will rectify any defects to the Open Space reasonably identified by the Council during the Defects Liability Period.

7. Not to Occupy or permit or allow the Occupation of more than 70% of the Dwellings until the Defects Liability Period for Open Space has passed and the Council has issued a Satisfaction Notice in accordance with paragraph 7 below.
8. On expiry of Defects Liability Period the Owners will invite the Council to make a final inspection of the Open Space. Subject to any defects reasonably identified by the Council being made good by the Owners, the Owners shall invite the Council to issue a Satisfaction Notice to the Owners.
9. Unless otherwise agreed with the Council in writing, within 4 months following the issue of the Satisfaction Notice the Owners shall have established the Management Company to the written satisfaction of the Council and have transferred the Open Space to the Management Company for onward management and maintenance, in accordance with the terms set out in Schedule 2 of this Deed. For the avoidance of doubt the Owners will continue to maintain the Open Space in accordance with the approved Specifications until such time that the Open Space is transferred to the Management Company.
10. On the laying out and completion of the Open Space it shall thereafter be retained solely for use by the public (free of charge) as open space and shall be maintained in accordance with the approved Specifications in perpetuity.

#### **PART 4**

##### **Private Roads and Paths**

1. The Owners will not Occupy or permit or allow the Occupation of more than 90% of the Dwellings until the freehold interest in the Private Roads and Paths have been transferred to the Management Company, in accordance with the terms set out in Schedule 2, and for the avoidance of doubt the Owners will continue to manage and maintain the Private Roads and Paths in accordance with the terms of the Planning Permission (and otherwise in accordance with good industry practice) until they are so transferred to the Management Company.

#### **PART 5**

##### **Management Company**

1. The Owners shall make provision to include in the transfer of the freehold or leasehold sale of each Dwelling a covenant by the purchaser to pay a reasonable annual charge for the maintenance of the Managed Areas which have been or are to be transferred to the Management Company (save that this annual charge shall not be imposed on the owners and occupiers of the Affordable Housing Units save through the relevant Registered Provider).
2. Upon any subsequent sale of such Dwelling the Owners will procure that the incoming buyer shall enter into direct covenants with the Management Company to pay a reasonable annual charge for the maintenance of the Managed Areas.
3. Immediately upon the sale of the first Dwelling the Owners will provide the Council with a copy of the transfer relating to the Dwelling including the covenants referred to in paragraph 1 above (and will thereafter provide copies to the Council of transfers relating to other Dwellings as may be requested by the Council from time to time).

#### **PART 6**

**Phasing**

1. Not Occupy or permit Occupation of more than 50% of the Open Market Dwellings until such time as the main retail unit in Tess Square Area has been brought into first use; and
2. Not Occupy or permit Occupation of more than 75% of Open Market Dwellings until such time as the construction of Tess Square Area has been completed

## **SCHEDULE 2**

### **Transfer**

1. The transfer of the Managed Areas to the Management Company shall:
  - i. be a transfer of the entire freehold interest;
  - ii. be free from any pre-emption or option agreement;
  - iii. be free from any mortgage, charge, lien or other such encumbrance;
  - iv. be free from any lease, licence or any other third party interests that would adversely affect the use for public recreation and amenity or as a road/path as applicable;
  - v. be subject to a covenant which prohibits the use for any purpose other than for public recreation and amenity or as a road/path as applicable;
  - vi. include all necessary rights of way with or without vehicles;
  - vii. reserve in favour of the Owners and any statutory authority any necessary rights and easements to enable the proper construction, maintenance and use of the Application Site and to use existing or proposed services comprised in the Application Site;
  - viii. reserve in favour of the Owners and any statutory authority the right to lay and use new services together with any rights of entry to inspect, repair, renew, cleanse and maintain the same;
  - ix. define by whom boundary structures shall be owned and maintained;
  - x. not require consideration in excess of one pound (£1).

**EXECUTED as a DEED by**

**PAUL DAVID CROCKER**

in the presence of

Witness signature:

Name:

Address:

Occupation:

**EXECUTED as a DEED by**

**EXECUTORS of DAVID GEORGE HANN CROCKER**

in the presence of

Witness signature:

Name:

Address:

Occupation:

**EXECUTED as a DEED by**

**SMOKEY DORSET DREAMS LTD.**

acting by a Director

**PAUL DAVID CROCKER**

in the presence of

Witness signature:

Name:

Address:

Occupation:

**EXECUTED** as a **DEED** by )  
**HSBC UK Bank PLC** )  
acting by its Attorneys )  
and )  
in the presence of: )

**EXECUTED** as a **DEED** by )  
**HSBC Bank PLC** )  
acting by its Attorneys )  
and )  
in the presence of )

## **APPENDIX 1 – PLAN 1**

## APPENDIX 2 – PLAN 2